

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAY ANTHONY FRYE,

Defendant-Appellant.

UNPUBLISHED

April 27, 2010

No. 290253

Washtenaw Circuit Court

LC No. 07-002248-FC

Before: SAAD, P.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Defendant appeals that portion of the judgment of sentence that required him to pay \$560 in court costs. We affirm. This decision is rendered without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to resisting and obstructing a police officer, MCL 750.81d(1). At sentencing, defense counsel said he and defendant read the PSIR, and had no corrections to make to it. The trial court sentenced defendant to serve two years' probation, subject to the conditions enumerated in the PSIR. Those conditions included, inter alia, that defendant pay court costs of \$560 at the rate of \$27 dollars per month.

Now, defendant says that imposition of court costs was discretionary, MCL 769.1k(b), and therefore, the trial court was obliged to determine if defendant had the ability to pay the costs. We disagree.

The interpretation of a statute presents a question of law that we review de novo. *People v Barbee*, 470 Mich 283, 285; 681 NW2d 348 (2004). However, because defendant did not object to the imposition of costs at the time of sentencing, this issue is not preserved, and our review is for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

MCL 769.1k provides:

(1) If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred pursuant to statute or sentencing is delayed pursuant to statute:

(a) The court shall impose the minimum state costs as set forth in section 1j of this chapter.

(b) The court may impose any or all of the following:

(i) Any fine.

(ii) Any cost in addition to the minimum state cost set forth in subdivision (a).

(iii) The expenses of providing legal assistance to the defendant.

(iv) Any assessment authorized by law.

(v) Reimbursement under section 1f of this chapter.

(2) In addition to any fine, cost, or assessment imposed under subsection (1), the court may order the defendant to pay any additional costs incurred in compelling the defendant's appearance.

(3) Subsections (1) and (2) apply even if the defendant is placed on probation, probation is revoked, or the defendant is discharged from probation.

(4) The court may require the defendant to pay any fine, cost, or assessment ordered to be paid under this section by wage assignment.

(5) The court may provide for the amounts imposed under this section to be collected at any time.

(6) Except as otherwise provided by law, the court may apply payments received on behalf of a defendant that exceed the total of any fine, cost, fee, or other assessment imposed in the case to any fine, cost, fee, or assessment that the same defendant owes in any other case.

MCL 771.3 also applies, and provides in pertinent part:

(7) If a probationer is required to pay costs as part of a sentence of probation, the court may require payment to be made immediately or the court may provide for payment to be made within a specified period of time or in specified installments.

The trial court had clear statutory authority to impose costs at the time of sentencing. In *People v Jackson*, 483 Mich 271, 290-292; 769 NW2d 630 (2009), the Michigan Supreme Court held that a trial court need not determine a defendant's ability to reimburse the county for the cost of appointed counsel at the time the reimbursement is ordered, but must evaluate the defendant's ability to pay only when enforcement of the order commences and the defendant has made a timely objection. Defendant cites no binding authority that holds that a trial court must apply a different standard and determine a defendant's ability to pay court costs at the time those costs are imposed and before enforcement of the order has begun.

Defendant claims that he is unemployed and indigent. However, the PSIR relied on by the trial court said that defendant was employed full time at the University of Michigan. At sentencing, defendant neither corrected this information, nor objected to the imposition of court costs. At no point since the date of sentencing, has defendant claimed to the trial court that he is unable to pay court costs as ordered. Defendant has not demonstrated that the trial court committed plain error by imposing court costs without first determining his ability to pay those costs.

Affirmed.

/s/ Henry William Saad

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray